

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at GREENEVILLE

JOSEPH BEARD

v.

UNITED STATES OF AMERICA

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2:13-cv-195; 2:09-cr-12(1)
Jordan/Inman

MEMORANDUM


On October 30, 2013, petitioner Joseph Beard was ordered to show cause, within ten (10) days, as to why his *pro se* motion and supplemental motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 should not be dismissed as untimely under § 2255(f)'s statute of limitations for filing motions to vacate, [Doc. 93]. More than ten days have passed since that order was entered, and petitioner has failed to show cause or otherwise respond to the order. Accordingly, for reasons contained in that order, this § 2255 motion will be **DENIED** as untimely, and this case will be **DISMISSED**.

The Court must now consider whether to issue a certificate of appealability (COA) should petitioner file a notice of appeal. Under 28 U.S.C. § 2253(a) and (c), a petitioner may appeal a final order in a § 2255 case only if he is issued a COA, and a COA will be issued only where the applicant has made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). A petitioner, whose claims have been rejected on a procedural basis, must demonstrate that reasonable jurists would debate the correctness of the Court's procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Porterfield v. Bell*, 258 F.3d 484, 485-86 (6th Cir. 2001).

The Court has individually assessed petitioner's claims regarding timeliness under the relevant standards and finds that those claims do not deserve to proceed further because they have no viability in light of the governing law. Thus, jurists of reason would not conclude the disposition of those claims was debatable or wrong. Because petitioner has failed to make a substantial showing of the denial of a constitutional right, a COA will not issue.

A separate judgment order will follow.

ENTER:


LEON JORDAN
UNITED STATES DISTRICT JUDGE